

STATE OF MICHIGAN
COURT OF APPEALS

RAFAEL TORRES,

Plaintiff-Appellee,

v

TERRI LYNN TORRES,

Defendant-Appellant.

UNPUBLISHED

August 19, 2014

No. 314453

Kent Circuit Court

LC No. 10-005563-DM

Before: GLEICHER, P.J., and HOEKSTRA and O'CONNELL, JJ.

HOEKSTRA, J., (*dissenting*).

I respectfully dissent.

At issue in this case is whether the arbitrator exceeded his or her authority. MCL 600.5081(2)(c). This Court has held that “arbitrators have exceeded their powers whenever they act beyond the material terms of the contract from which they primarily draw their authority or in contravention of controlling principles of law.” *Washington v Washington*, 283 Mich App 667, 672; 770 NW2d 908 (2009) (quotation marks and citation omitted). Defendant does not argue that the arbitrator acted beyond the terms of the contract; rather, defendant maintains that the arbitrator’s award was contrary to controlling law. This Court explained that errors of law must be “discernible on the face of the award itself.” *Id.* (quotation marks and citation omitted). Thus, only legal error “that is evident without scrutiny of intermediate mental indicia will suffice to overturn an arbitration award.” *Id.* (quotation marks and citation omitted). We will not review the arbitrator’s “mental path leading to the award.” *Id.* (quotation marks and citation omitted). Moreover, “in order to vacate an arbitration award, any error of law must be so substantial that, but for the error, the award would have been substantially different.” *Id.* (quotation marks and citation omitted).

The *Washington* case is instructive in this case. In *Washington*, the defendant argued that the arbitration award was contrary to Michigan law because it was facially inequitable. *Id.* at 673. This Court rejected the defendant’s argument, noting that while Michigan divorce law requires equitable distribution of property, it does not require equal distribution so long as there is an explanation for the chosen distribution. *Id.* This Court further noted that the arbitrator recognized and applied the law in Michigan and explained its uneven distribution of property. *Id.* at 674. This Court held that the arbitrator did not exceed his authority because Michigan law permits deviations beyond a purely even distribution and since the arbitrator utilized controlling

law, this Court could not review the legal soundness of the arbitrator's application of Michigan law. *Id.* Thus, because there was nothing on the face of the arbitrator's award that evinced an error of law, and the arbitrator explicitly considered the parties' arguments and evidence and based his decision on the controlling legal factors, this Court had no basis on which to conclude that the arbitrator exceeded his authority. *Id.* at 675.

Similarly, in this case, it is clear from the arbitration award and the arbitrator's response clarifying the award of the pension benefit at issue that the arbitrator recognized and applied Michigan law. Moreover, in its decision regarding the pension, the arbitrator noted that the original property award was more favorable to defendant, and thus, concluded that the unvested pension would be awarded to plaintiff. Nothing on the face of this award evinces any error of law, and the arbitrator clearly explained its reasoning for the award. Moreover, as recognized by the arbitrator, the pension was still unvested and there was no evidence of record regarding what the pension could be worth.¹ In fact, it is possible that plaintiff will fail to complete his 20 years of military service and the pension will not vest at all. Thus, defendant has failed to demonstrate that the arbitrator committed any legal error constituting action outside of his authority and defendant has similarly failed to demonstrate that any error was so substantial that, but for the error, the award would have been substantially different. *Id.* at 672. Accordingly, I would conclude that the trial court did not err by denying defendant's request to vacate the arbitration award.

/s/ Joel P. Hoekstra

¹ I note that defendant makes several claims regarding the value of the pension in her brief on appeal; however, these claims are not supported by any evidence of record. "This Court's review is limited to the record established by the trial court, and a party may not expand the record on appeal." *Sherman v Sea Ray Boats, Inc.*, 251 Mich App 41, 56; 649 NW2d 783 (2002).